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Servicing, Inc.

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

LORI DIANE BACZKOWSKI,

Case No.: 6:16-cv-00150-MC

Appellant,

v.

BANK OF NEW YORK MELLON;
QUALITY LOAN SERVICE
CORPORATION OF WASHINGTON; and
SELECT PORTFOLIO SERVICING, INC.,

Appellees.

APPELLEES BANK OF NEW YORK
MELLON, F/K/A THE BANK OF NEW
YORK, AS TRUSTEE, ON BEHALF OF
THE HOLDERS OF THE
ALTERNATIVE LOAN TRUST 2007-
23CB, MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2007-23CB
AND SELECT PORTFOLIO
SERVICING, INC.'S RESPONSE IN
OPPOSITION TO APPELLANT'S
MOTION FOR EXPEDITED RELIEF
FROM JUDGMENT—FRCP 60

Appellees Bank of New York Mellon, f/k/a The Bank of New York, as Trustee, on
Behalf of the Holders of the Alternative Loan Trust 2007-23cb, Mortgage Pass-Through

Certificates, Series 2007-23cb (“the **Trust**”) and Select Portfolio Servicing, Inc. (“**SPS**”) hereby oppose *pro se* Appellant Lori Diane Baczkowski’s (“**Debtor**” or “**Appellant**”) “Motion for Expedited Relief from Judgment—FRCP 60” (“**Motion for Relief**”), in which Debtor seeks relief from the Judgment of dismissal entered on November 3, 2016 (“**Judgment**”) (Dkt. #25). Although Debtor moves pursuant to Federal Rule of Civil Procedure 60(b)(3), (4), (5), and (6), she has not identified a cognizable basis for granting relief from the Judgment. Accordingly, the Court should deny Debtor’s Motion for Relief.

DISCUSSION

First, Debtor has not identified any fraud, misrepresentation, or misconduct as required by FRCP 60(b)(3). To prevail on a motion under this rule, the movant must prove that the judgment was “unfairly obtained,” not merely that the judgment is “factually incorrect.” *In re M/V Peacock*, 809 F.2d 1403, 1405 (9th Cir. 1987). Although Debtor clearly disagrees with this Court’s affirmance of the Bankruptcy Court’s dismissal, her disagreement with the resolution of the matter do not provide a basis for relief from the Judgment. The mere fact that the Trust has scheduled a foreclosure sale also does not provide a basis for relief.

Second, Debtor has not identified any reason why the Judgment is void, as required by FRCP 60(b)(4). A judgment may be set aside as void under Rule 60(b)(4) only “for the exceptional case in which the court that rendered judgment lacked even an ‘arguable basis’ for jurisdiction.” *United States Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 271 (2010) (citations omitted). Here, Debtor does not dispute that this Court had jurisdiction over the appeal from the

Bankruptcy Court's order. Nor has Debtor suggested any way in which the Court acted inconsistently with due process.¹

Third, Debtor has not identified any basis for setting aside the Judgment as inequitably applied prospectively to Debtor or other reason that justifies the relief that Debtor seeks. (FRCP 60(b)(5) and (6)). Again, Debtor's focus is only on her disagreement with the Court's ruling, which is insufficient to justify relief under Rule 60(b). Merely because Debtor identifies a decision from another district court that reached a different result on different facts does not justify setting aside a finally entered judgment more than a month after its entry.

CONCLUSION

Debtor has identified no basis for granting her relief from the Judgment. SPS and the Trust respectfully request that the Debtor's Motion for Relief be denied.

DATED: December 12, 2016.

STOEL RIVES LLP

/s/ Crystal S. Chase

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¹ To the extent that Debtor challenges the Court's interim order denying her second motion for extension of time that did not comply with local rules or the Court's prior instruction, that challenge is not cognizable under Rule 60(b) because it is not a "final . . . order[.]"

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **APPELLEES' RESPONSE IN
OPPOSITION TO APPELLANT'S MOTION FOR EXPEDITED RELIEF FROM
JUDGMENT** on the following named person(s) on the date indicated below by

- ☒ mailing with postage prepaid
- ☐ hand delivery
- ☐ facsimile transmission
- ☐ overnight delivery
- ☐ email
- ☐ notice of electronic filing using the Cm/ECF system

to said person(s) a true copy thereof, contained in a sealed envelope, addressed to said person(s)
at his or her last-known address(es) indicated below.

Lori Diane Bacskowski
1025 Ne Fall Drive
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Appellant, *Pro Se*

DATED: December 12, 2016.

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